

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Nelson L. Bruce,

Plaintiff,

vs.

Pentagon Federal Credit Union (a/k/a
PenFed Credit Union),

Defendant.

Civil Action No. 2:17-CV-2170-BHH-MGB

Memorandum in Opposition to Plaintiff's Motion to Vacate Judgment/Order

Pentagon Federal Credit Union ("PenFed") respectfully submits this brief in support of its opposition to Plaintiff's latest Motion to Vacate Judgment/Order (ECF No. 89).

Introduction

Plaintiff Nelson Bruce ("plaintiff") filed his complaint (ECF No.1) on August 15, 2017. On September 25, 2017, plaintiff filed an amended complaint ("the complaint" (ECF No.14)). The Court granted plaintiff's motion for leave to proceed *in forma pauperis* on December 6, 2017, and PenFed waived service of the complaint on December 15, 2017 (ECF No. 28).

The Court dismissed plaintiff's amended complaint on September 19, 2018 (ECF No.65), plaintiff filed a notice of appeal on September 26, 2018 (ECF No.68), and then plaintiff filed a Motion to Vacate/Set Aside Judgment/Order and Motion to Compel Arbitration and Stay Proceedings on May 1, 2019 (ECF Nos.74–75). The motions were denied by the Court on May 3, 2019 (ECF No.76). Plaintiff appealed the denial of his motions on May 13, 2019 (ECF No.78), and the Fourth Circuit dismissed the appeal of the Court's decision on the motions as

“improvidently docketed” on July 10, 2019 (ECF No.84). The Court’s dismissal of plaintiff’s case was affirmed by the Fourth Circuit on September 3, 2019 (ECF No.88).

Argument

Plaintiff’s May 1, 2019 Motion to Vacate/Set Aside Judgment/Order and Motion to Compel Arbitration and Stay Proceedings was denied by the Court via Text Order stating:

The stated ground for the motion is that the parties have recently entered into a new binding agreement/contract and addendum during the appeal, which supposedly binds the parties to dispose of the case via arbitration. (*See* ECF No. 74 at 1-2.) Plaintiff’s motion was filed eight (8) days after the entry, by the Fourth Circuit Court of Appeals, of an unpublished opinion affirming this Court’s disposition of the case pursuant to Defendant’s motion to dismiss. (*See* ECF No. 73.) The Rule 60 motion is rambling and incoherent, and has no basis in fact. (*See* ECF No. 74.) The parties have not entered into the agreement/contract and addendum that Plaintiff represents, and there is no applicable arbitration clause. Accordingly, both the Rule 60 motion (ECF No. 74) and the motion to compel arbitration (ECF No. 75) are denied. Entered at the direction of Honorable Bruce Howe Hendricks on 05/03/2019.

Mr. Bruce’s new Motion to Vacate Judgment/Order—which, as near as Defendant can tell, asks the Court to reconsider its May 3, 2019 order and again relies on the false allegation that Defendant entered into a new binding agreement/contract—fails for the same reasons as the one filed on May 1, 2019, and for the same reasons as previously set forth by the Court.

Moreover, to the extent Plaintiff offers a new argument (that the Court lacks jurisdiction over his claims due to a new binding agreement/contract and addendum mandating arbitration), that argument is also nullified by the Court’s finding that no such agreement exists. Additionally, the argument that via its May 3, 2019 order, “the Court had no business weighing the merits” of Plaintiff’s case creates an absurd result—whereby Plaintiff asks the Court to weigh the merits, loses on the merits, and then argues that the Court had no authority to make such a decision.

Conclusion

For all of these reasons, the Court should deny Plaintiff's motion.

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